

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHRISTIAN WALKER,

Petitioner,

vs.

BRIAN WILLIAMS, et al.,

Respondents.

Case No. 2:08-CV-01551-PMP-(GWF)

ORDER

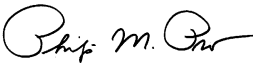
Petitioner has submitted a motion for partial dismissal (#54) of the grounds for relief that the court determined were unexhausted. The court will dismiss those grounds.

The court also will dismiss grounds 1 and 6. As the court explained, grounds 1(b) and 6 are procedurally defaulted. Order, pp. 5, 6 (#46). Petitioner had argued that the ineffective assistance of appellate counsel was cause to excuse the procedural default of those grounds. However, petitioner did not exhaust his claim of ineffective assistance of appellate counsel—it is ground 5, which petitioner asked the court to dismiss—and an unexhausted claim of ineffective assistance of counsel cannot be good cause to excuse a procedural default. See Murray v. Carrier, 477 U.S. 478, 488-89 (1986). See also Order, pp. 6-7 (#46). Therefore, the court will dismiss grounds 1(b) and 6 as procedurally defaulted. The court also explained that ground 1(a), which is the remaining part of ground 1, is a claim that the state court violated state law, which is not addressable in federal habeas corpus. Order, p. 7 (#46). Consequently, the court will dismiss ground 1(a).

1 IT IS THEREFORE ORDERED that petitioner's motion for partial dismissal (#54) is
2 **GRANTED**. Grounds 1, 4(f), 5, 6 are **DISMISSED** with prejudice. Ground 8 is **DISMISSED** to
3 the extent that it incorporates the claims in grounds 4(f) and 5.

4 IT IS THEREFORE ORDERED that respondents shall have forty-five (45) days to
5 file and serve an answer to the first amended petition (#22). The answer shall comply with Rule 5
6 of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner shall
7 then have forty-five (45) days from the date on which the answer is served to file a reply.

8 DATED: March 14, 2011.

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11 PHILIP M. PRO
12 United States District Judge
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